Fisheries Council of Canada | Conseil Canadien des Pêches

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Via E-mail (cool@usda.gov)
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Country of Origin Labeling Program, Room 2092-S
Agricultural Marketing Service
1400 Independence Avenue, SW
United States Department of Agriculture STOP 0249
Washington, DC 20250-0249

Dear Sir/Madam:

Re: Docket No. LSS-03-04

The Fisheries Council of Canada is a not-for-profit trade association representing over 110 fish and seafood companies throughout Canada. These member companies process and export the majority of Canada's fish and seafood production. Member companies also harvest a significant portion of the fisheries resources of Canada's fisheries. We appreciate the opportunity offered us to make comments regarding the final rule concerning the mandatory country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities and peanuts.

The starting point of our comments is to remind us all that the "country of origin labeling" directive from the United States Congress and Senate is found on three pages of the 450-page Farm Security and Rural Investment Act of 2002 (Farm Bill). In reviewing the Bill and the testimony, it seems the legislators were concerned mainly about the practice of retailers butchering sides of beef, lamb, and pork from the USA, Canada, New Zealand and other countries and when wrapping the product for display in their meat counter, the retailers were not advising customers which muscle cuts were from United States beef, lamb, or pork as opposed to foreign countries. Legislators from regions where fishing is important noted that the same thing occurs in retail fresh and frozen fish counters where a wide variety of fish is displayed and no country or origin information is provided to consumers. It is unfortunate that the Agricultural Marketing Service (AMS) did not focus on these important and targetted concerns and drafted rules specific to these issues. That is, products displayed by retailers as a "commodity" in fresh and frozen counters should have country of origin information available for consumers. In our opinion, the covered commodities and rules proposed by AMS go far beyond the intent of the Bill upon which the proposed rules are supposed to be based.

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In fisheries, AMS is in danger of embarking into a quagmire which eventually it will have to retreat as the proposed rules will be found to be impractical and contrary to US law as established by the United States Court of International Trade in New York. Fish and seafood is a highly internationally traded food item. In many circumstances, imports are not seen as direct competition to the domestic industry as often the imported species is just not found in domestic waters. The variety helps to keep the food service and retail sectors and consumers committed to fish and seafood on a regular basis. The United States, for example, is the third largest exporter of fish and seafood and the second largest importer of fish and seafood in the world.

Covered Commodities

Section 281 (3) (B) and (9) (B) of the Farm Bill clearly identify what fish products are to be covered: whole fish, fillets, steaks, and other flesh. As such, a clear and consistent rule across the covered commodities is required for exempted processed food items. As a first order, any food item found in Chapter 16 of the US tariff schedule should be exempted. Chapter 16 of the US tariff schedule, which conforms with the Brussels Tariff Nomenclature (BTN) has always been considered a tariff chapter for processed, prepared, preserved foods. These are not "commodity" products as discussed by the legislators in developing the Farm Bill. As such, canned fish, prepared or processed fish, breaded or battered fillets, fish sticks, entrées, meals, etc. should be exempted. Any suggestion that these types of products should be included goes far beyond the intent of the Bill. With respect to fish and fish products that are in Chapter 3 of the US tariff schedule, products that have been processed beyond the pure commodity stage should also be exempted. For example, products in Chapter 0305 (dried, salted or in brine, smoked, etc.) should be exempted. In essence, taking into account the wording in Section 281 (3) (B) and (9) (B) of the Bill, the covered commodities would be found only in US tariff Chapters 0302, 0303 and 0304, excluding livers and roes. In fact, there is an argument for excluding the frozen fish Section 0303 and frozen fillets and meats in 0304.

Unless a systematic approach, as suggested above, is taken, AMS runs the risk of introducing wide spread discrepancies between covered commodities. US fish products do not compete only against foreign fish imports but they also compete against US beef, pork, and lamb products. The current proposed rule where canned fish would be included but canned peas would not, defies logic. The peas as consumed from a package of canned peas look exactly like the harvested raw commodity. The fish as consumed from a can of tuna bears no resemblance to the wild tuna when harvested.

Country of Origin Rule

The final AMS rule should only state the requirements for the use of "Product of the United States" on a label, sign, etc. for the designated retail sector. It should not venture into or suggest changes with respect to country of origin labelling regarding imported products. The labelling of imported products is governed by the US Bureau of Customs and Border Protection. This rule (CBP Rule #102, 11 (a) (3)), which was upheld in a mid-late 1980s ruling of the Court of International Trade in New York, is that the country of origin of a product imported into the United States is determined on the basis whether the

product undergoes an applicable change in tariff classification (tariff shift) as a result of processing. As such, a fish harvested in the Barents Sea by a Russia-owned trawler, transported to China for primary processing, and shipped to Canada for final processing into a breaded fillet needs only to be labelled as "Product of Canada".

Similarly, pollock harvested by a US fishing vessel in US Alaskan waters transported to Canada for processing need only be identified as "Product of Canada". However, on a voluntary basis, the Farm Bill would allow the addition "harvested in the United States". If this voluntary addition is elected, appropriate records relating to the harvest of the fish in the United States must be maintained. In effect, Section 282 (2) (C) and (D) of the Farm Bill only impacts US processors from a mandatory perspective as it imposes an added restriction that fish must also be harvested by a US fishing vessel to qualify for a "Product of the United States" label. This added restriction is in conflict with the mid-late 1980s ruling of the Court of International Trade in New York wherein the processing of an imported fish raw material allows the US processor to label the product "Product of the United States".

Concluding Comments

Although the Bill calls for the provision of mandatory country of origin information including the designation of "wild/farm" for fish products by September 30, 2004, we strongly recommend that AMS adopt a phase-in approach. This initiative is marked by widespread confusion that has emerged among retailers, distributors, importers, US processors, and foreign processors. Final rules will not be available until April/May. As the September 2004 date only applies to the fish sector, a progressive, orderly introduction seems only appropriate. In addition, because of the current confusion and uncertainties, when introducing the final rules AMS should mount a comprehensive information program for retailers and the fish industry so that misunderstandings are kept to a minimum.

Once again, thank you for the opportunity to comment. We hope our recommendations are helpful. It is important that Americans continue to increase the amount of fish and seafood in their diet because of the well-documented health benefits of fish and seafood. It would be unfortunate if this initiative creates difficulties for retailers pushing them to substitute other protein products for fish and seafood.

Yours truly

Original Signed By

Patrick McGuinness
President

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